83-1064

Office-Supreme Court, U.S.
FILED
DEC 28 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.

IN RE
MADELINE M. BLACKWELL

Petitioner

v

MUNICIPAL COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES, MALIBU
JUDICIAL DISTRICT IN CALABASAS

Respondent

ON WRIT OF CERTIORARI TO THE
APPELLATE DEPARTMENT OF THE
SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

PETITION FOR WRIT OF CERTIORARI

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INDEX

	Page
Questions Presented.	ii, iii, 10-16
Prayer for Relief	1
Opinions Below	1, 2
Grounds for Jurisdiction	2, 3
Constitutional Provisions, Statutes and Regulations.	3-7
Statement of the case.	7-10
Reasons for granting the Writ.	10-16
Conclusion.	16
Appendix	A1-A3
Certificate of Service	17

QUESTIONS PRESENTED

I. WHETHER THE STATE MUNICIPAL COURT IS WITHOUT JURISDICTION FOR TRIAL SINCE THE 55 MPH SPEED LAW IS FEDERALLY MANDATED BY CONGRESS REQUIRING THE COURT OF ORIGINAL JURISDICTION TO BE FEDERAL DISTRICT COURT.

II. WHETHER CALIFORNIA VEHICLE CODE SEC. 22348a IS NULL AND VOID BECAUSE ITS EXISTENCE IS BASED ON THE BRIBERY AND COERCION OF 23 U.S. CODE SEC.154.

III. WHETHER CALIFORNIA PENAL CODE SECS. 19c AND 1042.5 ARE REPUGNANT TO THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF TRIAL BY JURY AND EQUAL PROTECTION

IV. WHETHER THE 55 MPH MAXIMUM SPEED LAW IS UNCONSTITUTIONALLY DISCRIMINATORY AND DENIES EQUAL PROTECTION SINCE ALL DRIVERS ARE NOT EVEN EXPECTED TO OBEY THE LAW

V. WHETHER THE CITATION STATES A PUBLIC OFFENSE AND PRECLUDES A FAIR TRIAL

SINCE IT FAILS TO STATE WHETHER THE ARREST WAS MADE FOR FAILURE TO CONSERVE FUEL OR FOR ENDANGERING THE LIVES AND PROPETY OF OTHERS AND FAILS TO GIVE A STARTING AND STOPPING TIME TO COVER THE ALLEGED PACING.

SUPREME COURT OF THE UNITED STATES

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No.

IN RE
MADELINE M. BLACKWELL)
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Petitioner)
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v)
)
THE STATE OF CALIFORNIA)
)
Respondent)

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Petitioner, Madeline M. Blackwell, respectfully prays that a writ of certiorari issue to review the decision of the Appellate Department of the Superior Court of the State of California, County of Los Angeles, which affirmed the Municipal Court order that it did not abuse its discretion or act beyond its jurisdiction in overruling petitioner's Demurrer.

OPINIONS BELOW

The Appellate Department of the

Superior Court of California, County of Los Angeles, denied petitioner's Petition for Writ of Prohibition or Certiorari and ruled that her petition was not timely. The order was made on May 10, 1983 and is set forth in the Appendix at A-1.

The decision of the California Court of Appeal denying petitioner's Petition for Writ of Habeas Corpus was entered on September 22, 1983 and is set forth in the Appendix at A-2.

The decision of the California Supreme Court denying a hearing was entered on October 26, 1983 and is set forth in the Appendix at A-3.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 USC Sec. 1257(3) on the ground that her rights under the XIV Amendment to the U.S. Constitution are being violated, and Art.III, Sec. 2 (3).

The constitutionality of 23 U.S.C. Sec. 154 has been drawn into question, an

act of Congress affecting the public interest, and neither the United States nor any agency, officer, or employee thereof is a party, so it is noted that 28 U.S.C. Sec. 2403(a) may be applicable.

The federal questions were presented in every level of the State Courts but all rejected petitioner's constitutional claims.

The denial of a hearing by the California Supreme Court was made on October 26, 1983. The instant Petition for Writ of Certiorari is filed within 60 days of that order.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

1. 23 U.S. Code Sec. 154 - National maximum speed limit (a) The Secretary of Transportation shall not approve any project under sec. 106...in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour...(c)...a reduction in speed limits to conserve fuel...(e) Each

State shall submit to the Secretary such data as the Secretary determines by rule is necessary to support its certification ...including data on the percentage of motor vehicles exceeding fifty-five miles per hour on public highways with speed limits posted at fifty-five miles per hour in accordance with criteria to be established by the Secretary...(f)(5) For the twelve-month period ending Sept. 30, 1983...if the data submitted by a State ...show that the percentage of motor vehicles exceeding fifty-five mph is greater than 30 per centum, the Secretary shall reduce the State's apportionment of Federal-aid highway funds...(h) The Secretary shall promptly apportion to a State any funds which have been withheld...if he determines that the percentage of motor vehicles in such State exceeding fifty-five mph has dropped to the level specified for the fiscal year for which the funds were withheld...

2. 28 U.S. Code Sec. 1355...The district

courts shall have original jurisdiction exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress...

3. Art. III, Sec. 2 (1) Jurisdiction of United States Court...1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States...

4. Art. III, Sec. 2 (3) Trial of Crimes 3. The trial of all crimes...shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed...

5. Amendment XIV Sec. 1...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws.

6. Art. I, Sec. 7(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Constitution of California.

7. Art. I, Sec. 16. Trial by jury is an inviolate right and shall be secured to all,...A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant... Constitution of California.

8. Art. I, Sec. 28. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. Constitution of California.

9. California Penal Code Sec. 19c. An infraction is not punishable by impri-

sonment. A person charged with an infraction shall not be entitled to a trial by jury...

10. California Penal Code Sec. 1042. Issues of fact shall be tried in the manner provided in Art. I, Sec. 7 of the Constitution of this State.

11. California Penal Code Sec. 1042.5. Trial of an infraction shall be by the court,...

12. California Vehicle Code Sec.22348(a) Notwithstanding Sec. 22349, 22356, or any other provision of this chapter to the contrary, no person shall drive a vehicle upon a highway at a speed greater than 55 miles per hour. (c) This section shall remain in effect 120 days from the date that the 55-mile-per-hour national maximum speed limit, as specified in Section 154 of Title 23 of the United States Code, is repealed.

STATEMENT OF THE CASE

On January 18, 1983 petitioner received a citation alleging a violation of 22348a V.C.

Exceeding the Maximum Speed Limit. The citation did not give either a starting or stopping time of the alleged pacing during which the alleged violation was alleged to have been observed as occuring.

The citation failed to state whether petitioner is accused of failing to conserve gasoline, or whether she is accused of endangering life and/or property.

On February 28, 1983, petitioner filed a written Demurrer before arraignment in the Municipal Court, County of Los Angeles, Malibu Judicial District in Calabasas, in which she challenged the jurisdiction of the trial court and the lack of facts on the citation as insufficient to constitute a public offense. She also refused to waive her constitutional right to trial by jury, and her XIVth Amendment rights of equal privileges and due process. The Honorable Richard L. Brand was presiding and overruled petitioner's Demurrer but granted a Stay at petitioner's request. At Periodic

intervals the Municipal Court has continued the Stay at petitioner's request to allow her to petition higher courts for relief. Petitioner has not yet been arraigned.

On April 29, 1983 petitioner filed a Petition for Writ of Prohibition or Certiorari in the Appellate Department of the Superior Court for the County of Los Angeles. She reiterated her Municipal Court arguments and reasserted her 14th Amendment rights. On may 10, 1983, said Court denied the Petition, ruling that the Municipal Court did not abuse its discretion or act beyond its jurisdiction, and further that the petition was not timely.

On July 8, 1983 petitioner attempted to file a Notice of Appeal in the Appellate Department of the Superior Court for the County of Los Angeles. She was not allowed to file said appeal on the grounds that a petition for a Writ from a Municipal Court could not be appealed. She was further advised that she had no further remedies.

On September 12, 1983 petitioner filed a Petition for a Writ of Habeas Corpus in the Court of Appeal of the State of California, Second Appellate District. Petitioner repeated her legal arguments. On September 22, 1983 said Court of Appeal denied the Petition for Writ of Habeas Corpus without showing which Division made the decision or any reason for the ruling.

On October 3, 1983 petitioner filed a Petition for Hearing in the California Supreme Court and again repeated her legal arguments with expansion. Said Court denied a Hearing on October 26, 1983 without giving a reason for the denial.

REASONS FOR GRANTING THE WRIT

1. The Appellate Department of Superior Court in its decision found that the Municipal Court did not abuse its discretion or act beyond its jurisdiction in overruling petitioner's Demurrer. Petitioner was not arguing that the Municipal Court had no jurisdiction to rule on her

Demurrer. That was not the issue. Petitioner asked the Municipal Court to note that she was making a special appearance through her Demurrer to challenge the jurisdiction of the court to proceed to trial and to act as trier of fact at trial. The Appellate Department of Superior Court evidently did not reach any of the issues presented by petitioner.

Furthermore, in ruling that the petition was not timely is too harsh an application of timeliness. There is no statutory time limit on filing a petition for a writ. The Court has the power to grant relief if it chooses to give more importance to substance over form.

A decision on the questions presented would have a direct impact on every other driver. Undoubtedly, some drivers would not avail themselves of their constitutional privileges if such privileges were restored, so the court should not fear the restoration of constitutional law.

I. WHETHER THE STATE MUNICIPAL COURT IS WITHOUT JURISDICTION FOR TRIAL SINCE THE 55 MPH SPEED LAW IS FEDERALLY MANDATED BY CONGRESS REQUIRING THE COURT OF ORIGINAL JURISDICTION TO BE FEDERAL DISTRICT COURT

The State Municipal Court is without jurisdiction because the 55 mph speed limit federally mandated by Congress in 23 U.S. Code Sec. 154 requires original jurisdiction to be in Federal District Court per 28 U.S. Code Sec. 1355 and Art. III, Sec. 2 (1) and Art. VI (2) of the Constitution of the United States.

II. WHETHER CALIFORNIA VEHICLE CODE SEC. 22348a IS NULL AND VOID BECAUSE ITS EXISTENCE IS BASED ON THE BRIBERY AND COERCION OF 23 U.S. CODE SEC. 154.

The federal government has no legal authority to impose a state speed limit. Therefore, 23 U.S. Code Sec. 154 expressly threatens to withhold federal highway funds if a certain percentage of drivers in a state exceed the national speed law. That

is unabashed federal blackmail and is perceived widely by the motoring public as cash-register justice. The expressed threat to withhold highway funds if the State failed to pass and require only a certain percentage of drivers to observe the nationally mandated 55 mph renders California Vehicle Code Sec. 22348a null and void.

III. WHETHER CALIFORNIA PENAL CODE SECS. 19c and 1042.5 ARE REPUGNANT TO THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF TRIAL BY JURY AND EQUAL PROTECTION

California Penal Code Secs. 19c and 1042.5 are offensive to the Constitution and are null and void. The right of trial by jury is made absolute by the marriage of Art. I, Sec. 16 and Art. I, Sec. 28 of the Constitution of California and Art. III, Sec. 2, Cl. 3 and Amendments VI, VII and XIV of the Constitution of the United States. These sections of the Constitution preclude the viability of statutes such as Penal Code Secs. 19c and 1042.5. This Court has even

ruled in some states that a two-tier system of eventually granting a trial by jury in traffic cases gives some protection to this right of trial by jury.

IV. WHETHER THE 55 MPH MAXIMUM SPEED LAW IS UNCONSTITUTIONALLY DISCRIMINATORY AND DENIES EQUAL PROTECTION SINCE ALL DRIVERS ARE NOT EVEN EXPECTED TO OBEY THE LAW

The federally mandated 55 mph in 23 U.S. Code Sec. 154 expressly states that only a certain percentage of drivers are required to obey the law, and the State obediently submits a report to the federal bureaucracy showing what percentage of drivers it required to obey 22348a Vehicle Code. Thus, the statute is not applied equally to all drivers and is discriminatory and violates the equal protection and due process clauses in Art. I, Sec. 7(a) and (b) and Sec. 26 of the Constitution of California and the Fifth and Fourteenth Amendments of the Constitution of the United States and is thus null and void.

V. WHETHER THE CITATION STATES A PUBLIC OFFENSE AND PRECLUDES A FAIR TRIAL SINCE IT FAILS TO STATE WHETHER THE ARREST WAS MADE FOR FAILURE TO CONSERVE FUEL OR FOR ENDANGERING THE LIVES AND PROPERTY OF OTHERS AND FAILS TO GIVE A STARTING AND STOPPING TIME TO COVER THE ALLEGED PACING

The citation fails to give a starting or stopping time during which the arresting officer alleges that he saw a violation of 22348a V.C. She is thus precluded from hiring a mathematical expert to prove that she was not going at the speed charged and that the officer was mistaken.

The citation also fails to state if the petitioner is accused of failing to save gasoline, and, if so, how much, or if she is accused of driving so recklessly that she endangered the life or property of another.

The omission of these allegations precludes petitioner from the ability to prepare an adequate defense without which she would

be unable to have a fair trial, thus violating her rights under thedue process and equal protection clauses of the state and federal constitutions, Art. I, Sec. 7(a) and (b) and 26 of the Constitution of California and Fifth and Fourteenth Amendments of the Constitution of the United States. The petitioner should not be required to participate in a "trial" where she is given the opportunity only of trying to prove a negative which doesn't prove anything to the court, so she would be rubber-stamped "Guilty" so that she could be submitted as a statistic to obtain federal highway funds.

Conclusion

Petitioner prays that the Court will overlook the form and look at the substance of her petition even if she is in pro se and grant the relief requested.

This petition is respectfully submitted.

Dated: December 21, 1983.

Madeline M. Blackwell

Madeline M. Blackwell,
Petitioner In Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December I served a copy of this Petition for Writ of Certiorari by depositing it in the U.S. mail, first-class postage prepaid, at Newport Beach, California, and addressed to:

The Honorable Richard Brand
Municipal Court of California
Malibu Judicial District in Calabasas
24121 W. Arwolinda
Calabasas, California

District Attorney of Los Angeles County
849 S. Broadway, 11th Floor
Los Angeles, Ca. 90012

Appellate Department of the Superior Court
of the State of California, County of
Los Angeles
111 N. Hill,
Los Angeles, California

Madeline M. Blackwell
Madeline M. Blackwell,
In Pro Se

DEPT. 70

Date May 10, 1983 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

HONORABLE FLORENCE BERNSTEIN JUDGE | B.J. SCHNEIDER Deputy Clerk
NONE Deputy Sheriff | NONE Reporter
(Parties and counsel checked if present)

C 451318 (M.C. No. S 389559) Counsel for Petitioner: In Pro Per

MADELINE M. BLACKWELL, Petitioner
VS
MUNICIPAL COURT OF THE MALIBU JUDICIAL DISTRICT (CALABASAS), Respondent
AND
PEOPLE OF THE STATE OF CA, R.P.I.

Counsel for Defendant

NATURE OF PROCEEDINGS

PETITION FOR WRIT OF PROHIBITION OR CERTIORARI

The Court has read and considered the above-captioned Petition, and now makes the following order:

Petition is denied. The court did not abuse its discretion or act beyond its jurisdiction in overruling petitioner's demurrer. Furthermore, the petition is not timely, People v. Municipal Court (Mercer) (1979) 99 CA3d 749.

Copies of this minute order are transmitted this date, addressed as follows:

Madeline M. Blackwell
6 Rue Valbonne
Newport Beach, CA 92660

Presiding Judge
Malibu Municipal Court
23525 Civic Center Way
Malibu, CA 90265

District Attorney
849 S. Broadway, 11th Fl.
Los Angeles, CA 90012

DEPT 70

MINUTES ENTERED
5/10/83
COUNTY CLERK

MINUTE ORDER

APPENDIX A-1

Los Angeles, Cal. SEP 22 1983, 19

TITLE { In Re: Blackwell on Habeas Corpus } No. B 001114

C-451318
S-389559

The Petition for Writ of Habeas Corpus is Denied.

CLAY ROBBINS, *Clerk*

CAM ⓘ • OSP

APPENDIX A-2

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 26 1983

I have this day filed Order _____

HEARING DENIED

In re: 2 Crim. *No.* B001114

MADELINE M. BLACKWELL on habeas corpus

vs.

Respectfully,

Clerk

27074-877 8-82 4M • OSP

APPENDIX A-3